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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2012-0079]

Golden Nematode; Removal of Regulated Areas in Livingston and Steuben Counties, New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the golden nematode regulations by removing areas in Livingston and Steuben Counties in New York from the list of generally infested areas. Surveys and other data have shown that certain areas in these two counties are free of golden nematode, and we have determined that regulation of these areas is no longer necessary. As a result of this action, areas in Livingston and Steuben Counties in New York that have been listed as generally infested will be removed from the list of areas regulated for golden nematode. This action is necessary to relieve restrictions on certain areas that are no longer necessary.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0079-0001>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2012-0079, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0079> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Program Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 851-2128.

SUPPLEMENTARY INFORMATION:

Background

The golden nematode (Globodera rostochiensis) is a destructive pest of potatoes and other solanaceous plants. Potatoes cannot be economically grown on land that contains large numbers of the nematode. The golden nematode has been determined to occur in the United States only in parts of the State of New York.

In 7 CFR part 301, the golden nematode quarantine regulations (§§ 301.85 through 301.85-10, referred to below as the regulations) set out procedures for determining the areas regulated for golden nematode and impose restrictions on the interstate movement of regulated articles from regulated areas.

Paragraph (a) of § 301.85-2 states that the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), shall list as regulated areas each quarantined State or each portion thereof in which golden nematode has been found or in which there is reason to believe that golden nematode is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The areas in Livingston County and Steuben County have been regulated since the early 1980s and the 1960s, respectively.

Paragraph (c) of § 301.85-2 states that, in accordance with the criteria listed in § 301.85-2(a), the Deputy Administrator shall terminate the designation of any area listed as a regulated area and suppressive or generally infested area when he or she determines that such designation is no longer required. Surveys and other data have revealed that certain areas in Livingston and Steuben Counties are free of golden nematode. As a result, it is no longer necessary to regulate these areas or restrict the interstate movement of golden nematode regulated articles from these areas.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary on the specified areas in Livingston and Steuben Counties in New York that have been regulated for golden nematode. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the Federal Register.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the

Federal Register. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

This rule codifies a Federal Order issued in February 2012, removing certain areas in Livingston and Steuben Counties in the State of New York from the golden nematode domestic quarantine regulation in §301.85, thereby reducing the golden nematode regulated area by a total of 262,847 acres.

Golden nematode is a major pest of potato plants and also attacks eggplant, tomato plants, and soybeans, among other crops. The golden nematode quarantine negatively affects the sales of these agricultural commodities, and the operations of non-agricultural businesses that use earth-moving equipment as well. The pest is spread by the transport of cysts in soil, in particular through the inadvertent movement of infested soil attached to agricultural products, farming equipment, and other regulated articles.

In 2007, there were 38 farms that harvested potatoes in these two counties in New York, 10 farms in Livingston County and 28 farms in Steuben County. These 38 farms represented about 4.4 percent of potato farms in the State of New York. New York farms that harvested

potatoes in 2007 represented about 6 percent of such farms in the United States and planted about 2 percent of the Nation's acres from which potatoes were harvested.

Affected entities will benefit from no longer needing to satisfy compliance requirements of the quarantine. They may also find improved export opportunities. While the potato farms in the two counties qualify as small entities, they are few in number and their share of the Nation's potato industry is small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.85-2a, under the heading “New York,” paragraph (1), the entries for Livingston County and Steuben County are revised to read as follows:

§ 301.85-2a Regulated areas; suppressive and generally infested areas.

* * * * *

New York

(1) Generally infested area:

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Livingston County. (A) That portion of land in the town of Avon bounded as follows: Beginning at a point marked by latitude/longitude coordinates 42°90'56", -77°68'72"; then east along a farm road to coordinates 42°90'54", -77°68'50"; then east along a farm road to coordinates 42°90'60", -77°68'25"; then north along a drainage ditch to coordinates 42°90'69", -77°68'23"; then north along a drainage ditch to coordinates 42°90'79", -77°68'47"; then north to coordinates 42°91'03", -77°68'44"; then west along the south side of a farm road to coordinates

42°91'03", -77°68'57"; then south along a farm road to point of beginning at coordinates 42°90'56", -77°68'72";

(B) The area known as "South Lima North Muck" in the town of Lima bounded as follows: Beginning at a point along the north side of South Lima Road marked by latitude/longitude coordinates 42°85'53", -77°67'38"; then north along a farm road to coordinates 42°85'88", -77°67'12"; then east along a farm road and along a forested edge to coordinates 42°85'94.7", -77°66'60.1"; then north along an irrigation ditch to coordinates 42°86'10.9", -77°66'59.0"; then east along a forested edge to coordinates 42°86'11.2", -77°66'47.7"; then north along a farm road to coordinates 42°87'35", -77°66'51"; then west along a farm road to coordinates 42°87'35", -77°66'84"; then south along Little Conesus Creek to coordinates 42°87'12.56", -77°66'93.38"; then west to include a portion of an access road and gravel clean off site to coordinates 42°87'12.60", -77°67'05.50"; then south to coordinates 42°87'11.19", -77°67'04.43"; then east to coordinates 42°87'11.05", -77°66'99.68"; then north to coordinates 42°87'12.03", -77°66'98.99"; then east to coordinates 42°87'11.97", -77°66'93.67"; then south along Little Conesus Creek to coordinates 42°86'88", -77°67'02"; then west along a farm road to coordinates 42°86'88", -77°67'13"; then south along a farm road to coordinates 42°86'59", -77°67'33"; then south along a farm road to coordinates 42°86'42", -77°67'40"; then west along a farm road to coordinates 42°86'43", -77°67'61"; then south along a farm road to coordinates 42°85'67", -77°68'02"; then east to coordinates 42°85'64", -77°67'41", then south along Little Conesus Creek to coordinates 42°85'53", -77°67'45"; then east to point of beginning at coordinates 42°85'53", -77°67'38";

(C) The area known as "South Lima South Muck" in the town of Lima bounded as follows: Beginning at a point along the south side of South Lima Road marked by

latitude/longitude coordinates 42°85'52", -77°67'74"; then south to coordinates 42°85'48", -77°67'74"; then east to coordinates 42°85'48", -77°67'67"; then south to coordinates 42°85'09", -77°67'70"; then south to coordinates 42°84'47", -77°67'72"; then east to coordinates 42°84'46", -77°67'39"; then north along a farm road to coordinates 42°84'77", -77°67'28"; then east along a farm road to coordinates 42°84'88", -77°67'00"; then north along a farm road to coordinates 42°85'12", -77°67'01"; then west along a farm road to coordinates 42°85'12", -77°67'20"; then north along a farm road to coordinates 42°85'16", -77°67'20"; then west along a farm road to coordinates 42°85'18", -77°67'40"; then north to coordinates 42°85'41", -77°67'40"; then west to coordinates 42°85'45", -77°67'66"; then north to coordinates 42°85'52", -77°67'65"; then west to point of beginning at coordinates 42°85'52", -77°67'74"; and

(D) The area known as “Wiggle Muck” in the town of Livonia bounded as follows: Beginning at a point along the west side of Plank Road (State Highway 15A) marked by latitude/longitude coordinates 42°84'89.0", -77°61'36.7"; then west to coordinates 42°84'91", -77°62'03"; then south along a farm road to coordinates 42°84'68", -77°61'92"; then south along a farm road to coordinates 42°84'19", -77°61'88"; then east to coordinates 42°84'22", -77°61'61"; then north along a farm road to coordinates 42°84'87.2", -77°61'68.1"; then east to the west side of Plank Road marked by coordinates 42°84'87.2", -77°61'35.9"; then north to point of beginning at coordinates 42°84'89.0", -77°61'36.7".

* * * * *

Steuben County. (A) The towns of Prattsburg and Wheeler;

(B) The area known as “Arkport Muck North” located in the town of Dansville and bounded as follows: Beginning at a point along the west bank of the Marsh Ditch that

intersects a farm road marked by latitude/longitude coordinates 42°42'30", -77°71'21"; then north along the Marsh Ditch to coordinates 42°42'96.1", -77°71'54.0"; then west along a 45-foot wide hedgerow to coordinates 42°42'83.1", -77°72'00.3"; then south through woods, along a farm road, and field border to coordinates 42°42'55", -77°71'89"; then east along a tree line to coordinates 42°42'54", -77°71'80"; then south along a tree line to coordinates 42°42'30", -77°71'57"; then east to point of beginning at coordinates 42°42'30", -77°71'21";

(C) The area known as "Arkport Muck South" located in the town of Dansville and bounded as follows: Beginning at a point along the west side of New York Route 36 marked by latitude/longitude coordinates 42°40'54.5", -77°69'79.0"; then north along the west side of New York Route 36 to coordinates 42°41'45", -77°69'99"; then west along a farm road to coordinates 42°41'45", -77°70'29"; then north along a farm road to coordinates 42°41'60", -77°70'36"; then west along a farm road to coordinates 42°41'62", -77°70'83"; then north along the Marsh Ditch to coordinates 42°41'86", -77°70'97"; then west along a farm road to coordinates 42°41'81", -77°71'21"; then south along a farm road to coordinates 42°41'76.0", -77°71'18.0"; then west along a fallow strip to coordinates 42°41'75.6", -77°71'40.2"; then south along a fallow strip to coordinates 42°41'61.3", -77°71'42.0"; then west along a farm road to coordinates 42°41'60.4", -77°71'68.1"; then south along a farm road on the east side of the Conrail right-of-way (Erie Lackawanna Railroad) to coordinates 42°40'50", -77°71'07"; then east along a farm road to coordinates 42°40'49", -77°70'38"; then north along an irrigation ditch to coordinates 42°40'69.9", -77°70'46.8"; then east along an irrigation ditch to coordinates 42°40'69.7", -77°70'34.3"; then south along the Marsh Ditch to coordinates 42°40'55.0", -77°70'26.5"; then east to point of beginning at coordinates 42°40'54.5", -77°69'79.0";

(D) The property in the town of Cohocton (formerly known as the “Werthwhile Farm”) bounded as follows: Beginning at a point along the north side of Brown Hill Road marked by latitude/longitude coordinates 42°45'03.5", -77°53'56.2"; then north along a forest edge to coordinates 42°45'27.5", -77°53'55.7"; then west along a forest edge to coordinates 42°45'27", -77°53'72.9"; then north along a forest edge to coordinates 42°45'47.6", -77°53'72.2"; then west along a forest edge and a hedgerow to the east side of Rex Road to coordinates 42°45'48.7", -77°54'40.7"; then southwest along the east side of Rex Road to coordinates 42°45'39.4", -77°54'53.6"; then south along a hedgerow and a forest edge to coordinates 42°45'05.7", -77°54'54.7"; then east along a hedgerow and the north side of Brown Hill Road to point of beginning at coordinates 42°45'03.5", -77°53'56.2"; and

(E) The property located in the town of Fremont that is bounded as follows: Beginning at a point on Babcock Road that intersects a farm road marked by latitude/longitude coordinates 42°43'68.06", -77°57'51.11"; then west along the farm road to coordinates 42°43'67.22", -77°57'80.56"; then south to coordinates 42°43'60.00", -77°57'80.28"; then west to coordinates 42°43'59.44", -77°58'07.50"; then south to coordinates 42°43'35.28", -77°58'06.39"; then east to coordinates 42°43'33.06", -77°57'78.89"; then south to coordinates 42°43'18.61", -77°57'77.78"; then east to coordinates 42°43'23.06", -77°57'71.39"; then north to coordinates 42°43'30.28", -77°57'63.89"; then east to coordinates 42°43'30.28", -77°57'61.39"; then north to

coordinates 42°43'49.44", -77°57'56.94"; then east to coordinates 42°43'49.17",
-77°57'49.72"; then north to the point of beginning at coordinates 42°43'68.06",
-77°57'51.11".

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Done in Washington, DC, this 2nd day of January, 2013 .

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-00206 Filed 01/08/2013 at 8:45 am; Publication Date: 01/09/2013]